

**United States Department of Labor
Employees' Compensation Appeals Board**

E.V., Appellant

and

**DEPARTMENT OF JUSTICE, METROPOLITAN
DETENTION CENTER, Los Angeles, CA, Employer**

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) **Docket No. 11-2117**
) **Issued: May 15, 2012**
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 21, 2011 appellant filed a timely appeal from an August 16, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant is entitled to an additional schedule award for the left leg.

FACTUAL HISTORY

On April 7, 2005 appellant, then a 32-year-old correctional officer, filed a traumatic injury claim (Form CA-1) alleging that he sustained a left knee injury in the performance of duty on March 15, 2005. On May 11, 2005 OWCP accepted the claim for left knee medial meniscus derangement. Appellant underwent left knee arthroscopic surgery on October 24, 2005.

¹ 5 U.S.C. § 8101 *et seq.*

In a report dated April 18, 2006, an OWCP medical adviser opined that, under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, appellant had a five percent left leg impairment. The medical adviser stated that appellant had residual patella chondromalacia for which the impairment was five percent under Table 17-31.

By decision dated May 9, 2006, OWCP issued a schedule award for a five percent left leg impairment. The period of the award was 14.40 weeks commencing March 13, 2006.

In a report dated August 12, 2010, Dr. Keith Feder, an orthopedic surgeon, noted that appellant underwent left knee surgery, including a partial lateral meniscectomy and arthroscopic chondroplasty of the patella.

By report dated March 16, 2011, Dr. Feder provided results on examination and stated that appellant had reached a permanent and stationary status. Appellant had surgery for a partial lateral meniscectomy and under the fifth edition of the A.M.A., *Guides* this was a two percent leg impairment. Dr. Feder provided results on examination and noted that x-rays showed good maintenance of the joint spaces throughout.

On April 4, 2011 appellant filed a claim for compensation (Form CA-7) for an additional schedule award.

OWCP referred the case to an OWCP medical adviser for evaluation of the schedule award issue. In a report dated July 31, 2011, the medical adviser opined that appellant had impairments for both the partial lateral meniscectomy and chondromalacia patella. He opined that, under the sixth edition of the A.M.A., *Guides*, Table 16-3, the impairment for the meniscal injury was two percent and one percent for patellofemoral arthritis. As to the arthritis, the medical adviser found the default value of three percent should have a net adjustment of -2, based on grade modifiers for functional history, physical examination and clinical studies. The medical adviser concluded that, since the three percent total was less than the five percent appellant had already received, he was not entitled to an additional schedule award.

By decision dated August 16, 2011, OWCP denied the claim for an additional schedule award.

LEGAL PRECEDENT

Section 8107 of FECA provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.² Neither FECA nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants, OWCP has

² 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid. Additional members of the body are found at 20 C.F.R. § 10.404(a).

adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.³ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.⁴

With respect to knee impairment, the A.M.A., *Guides* provides a regional grid at Table 16-3. The class of impairment (CDX) is determined based on specific diagnosis, and then the default value for the identified CDX is determined. The default value (grade C) may be adjusted by using grade modifiers for Functional History (GMFH), Table 16-6, Physical Examination (GMPE), Table 16-7 and Clinical Studies (GMCS), Table 16-8. The adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).⁵

It is well established that benefits payable under 5 U.S.C. § 8107(c) are reduced by the period of compensation paid under the schedule for an earlier injury if: (1) compensation in both cases is for impairment of the same member or function or different parts of the same member or function; and (2) the latter impairment would duplicate in whole or in part the compensation paid for the prior impairment.⁶

ANALYSIS

OWCP denied the request for an additional schedule award on the grounds that appellant's current left leg impairment was three percent, and he had already received a schedule award for a five percent left leg impairment. As the Board has held, it is not simply a matter of comparing the percentage of the prior award to the current impairment.⁷ Even if the left knee was involved in the prior award, there remains an issue of whether the current impairment duplicates in whole or in part the prior award.

In this case, the prior award of five percent was based on the diagnosis of patella arthritis.⁸ The current impairment included two percent impairment for a partial lateral meniscectomy. But even if the meniscectomy impairment was not the basis for the prior award, the Board notes that the knee impairment is determined under Table 16-3. In applying such a diagnosis-based impairment, the sixth edition of the A.M.A., *Guides* indicate that in most cases only one diagnosis in a region will be appropriate, and if a patient has two significant diagnoses, the examiner should use the diagnosis with the highest impairment in that region that is causally related for the impairment evaluation.⁹

³ A. George Lampo, 45 ECAB 441 (1994).

⁴ FECA Bulletin No. 09-03 (issued March 15, 2009).

⁵ The net adjustment is up to +2 (grade E) or -2 (grade A).

⁶ T.S., Docket No. 09-1308 (issued December 22, 2009); 20 C.F.R. § 10.404(c).

⁷ See T.S., *supra* note 6.

⁸ The table cited by the medical adviser, Table 17-31 of the fifth edition of the A.M.A., *Guides*, is a table for arthritis impairments based on roentgenographically determined cartilage intervals.

⁹ A.M.A., *Guides* 497.

Therefore, the impairment based on a meniscectomy would not be combined with an impairment for patellofemoral arthritis. The impairment would be determined based on the diagnosis with the highest impairment. In this case, the default (grade C) impairment for a partial meniscectomy is two percent.¹⁰ The medical adviser applied the net adjustment formula noted above by using a grade modifier of 1 for physical examination and 0 for clinical studies, resulting in a net adjustment of -1 or a grade B impairment.¹¹ Since the grade B impairment is also two percent, the medical adviser found two percent impairment.

With respect to patellofemoral arthritis, the grade C impairment is three percent for full thickness articular cartilage defect. The grade E impairment is 5 percent, and only if there was a two millimeters cartilage interval would the impairment range from 7 to 13 percent.¹² The Board notes that Dr. Feder reported good maintenance of the joint spaces on x-ray. There was no evidence presented of a decreased cartilage interval. The medical adviser applied the net adjustment formula for GMPE, GMFH and GMCS for a net adjustment of -2, or a grade A impairment of one percent.¹³

The Board accordingly finds that the evidence does not support a current impairment of greater than the five percent previously awarded. The knee impairment under Table 16-3 would be two percent (for the higher impairment based on partial meniscectomy) and would be duplicative of the prior award. OWCP properly determined that appellant was not entitled to an increased schedule award.

Appellant may request an increased schedule award based on new medical evidence showing a progression of an employment-related condition resulting in an increased permanent impairment.

CONCLUSION

The Board finds that appellant is not entitled to an additional schedule award for the left leg.

¹⁰ *Id.* at 509, Table 16-3. The CDX is 1 for a partial meniscectomy and the highest impairment is three percent (grade E).

¹¹ A grade modifier for functional history was not used as it was the basis for determining the diagnostic criteria class. *Id.* at 500.

¹² A.M.A., *Guides* 511, Table 16-3.

¹³ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 16, 2011 is affirmed.

Issued: May 15, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board